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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,402	01/13/2006	Koji Ukai	0425-1242PUS1	9872

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EXAMINER	
HUANG, GIGI GEORGIANA	
ART UNIT	**PAPER NUMBER**
1612	

NOTIFICATION DATE	DELIVERY MODE
09/22/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/564,402	UKAI ET AL.	
	Examiner	Art Unit	
	GIGI HUANG	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 July 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4 and 6-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4 and 6-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/21/2008, 1/17/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

Status of Application

1. The response filed July 21, 2008 has been received, entered and carefully considered. The response affects the instant application accordingly:

   a. Claim 1 has been amended.

2. Claims 1-4 and 6-9 are pending in the case.

3. Claims 1-4 and 6-9 are present for examination.

4. The text of those sections of title 35.U.S. Code not included in this action can be found in the prior Office action.

5. All grounds not addressed in the action are withdrawn or moot.

Information Disclosure Statement

6. The Examiner thanks the Applicant for the clarification on JP-09-216817 and JP-09-511257, which has been notated as considered. The corrected information disclosure statement (IDS) submitted on January 17, 2008 is enclosed.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The claims draw to a "placebo granule" with no specific description of what materials would be considered for the "placebo granule". The specification recites that “placebo granules” is an extender for the active granules, for improving the handling of the composition, and the formulation is not limited (Page 15).

The term is not adequately described as it is defined by a functional characteristic where it is defined by what it *does* and not what it *is*. Second, it does not describe adequately the degree of delay or extension or profile desired to ascertain what compounds or materials would fulfill the description. As a result, the fact pattern indicates that the artisan was not in possession of the claimed method of use.

Further, if a biomolecule is described only by a functional characteristic, without any disclosed correlation between function and structure of the compound, it is “not sufficient characteristic for written description purposes, even when accompanied by a method of obtaining the claimed sequence.” MPEP § 2163. There is insufficient disclosure for one of skill in the art to recognize that the applicant was in possession of the necessary common attributes or feature of the genus as only one specific example- the combination of mannitol, crospovidone, citric acid, and anhydrous silicic acid is disclosed in the specification.

Thereby, the specification does not provide sufficient descriptive support for the myriad of compounds embraced by the claims. Additionally, as the disclosed example contains mannitol which is pharmaceutically active and known to be a diuretic and

laxative, incorporation of mannitol in the "placebo granule" is contrary to the known use of the term in the art, further supporting the issue of adequate description for the term.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim1-4 and 6-9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are drawn to “active granules comprising a pharmaceutically active substance” and “placebo granules”. It is unclear what is encompassed by these terms as the specification recites “active granules” to have a pharmaceutically active substance which includes several drug classes and “drugs for controlling intestinal function” and diuretic agents and “placebo granules” are not described by what they are other than they are “extenders” which is not clearly addressed in the specification as to what is encompassed and “are not specifically limited” and can comprise a thickening agent.

The specific example is the combination of mannitol, crospovidone, citric acid, and anhydrous silicic acid. This is confusing as mannitol is exemplified in the specification as the “placebo granule” but is known to be a diuretic and for controlling intestinal function such as constipation (see Merck and Pharmacotherapy via Medscape sheets) and is therefore also an “active granule”. This is also contrary to what is known in the art for the term "placebo". It is unclear what is encompassed by these terms and what the metes and bounds of the invention are at the time of the invention as the

“active granule" and the “placebo granule” can be the same. For purposes of prosecution, any granule with any composition applies for either the “active” or the “placebo”.

11. Claims 1-4 and 6-9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are drawn to a “thickening agent”, “functional polymer”, "gastric polymers”, “enteric polymers” and “sustained release polymers”. It is unclear what is encompassed by these terms as the specification does not clearly state the distinction between the terms, have several examples that are known to be in other categories, and does not describe what is encompasses by each. As for example, the specification recites a “functional polymer” to control the release of a pharmaceutical active substance including "gastric polymers”, “enteric polymers” and “sustained release polymers”. However, “gastric polymers" is not a standard term in the art to ascertain what the metes and bounds are and the examples in the specification are to polymers such as HPMC, hydroxypropyl cellulose, and aminoalkyl methacrylate copolymers (Page 10) however they are also known as controlled release (i.e. sustained) polymers such as HPMC (see Ishikawa et al.). However, HPMC is also listed as a thickening agent in the specification (Page 14) but the specification recites it to be a “gastric polymer” and the claims have a thickening agent and a polymer such as a gastric polymer. It is unclear if they are the one and the same. Additionally, the specification recites “sustained release polymers” to include hydroxypropylmethylcellulose acetate

succinate which is also known as an enteric polymer (see Bateman et al. Page 10 line 30-32) but is not listed so in the specification which is confusing as there does not seem to be a distinction between the groups. It is noted that traditionally, enteric polymers are viewed as sustained release polymers as they are by nature affecting a sustained release profile by producing a timed release. It is unclear what the terms are meant to encompass and as a result does not allow one of skill in the art to ascertain the metes and bounds of the invention. For purposes of prosecution, the thickening agent and the polymer can be the same; "functional polymer"," gastric polymers", "enteric polymers" and "sustained release polymers" are all the same and any polymer applies.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-4, 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Depui et al. (WO 97/25066).

Depui et al. teaches a pharmaceutical dosage form comprising proton pump inhibitors, bases (antacid agents), alginates, thickeners, polymers (including enteric polymers), and other pharmaceutical excipients to form multilayered tablets, sachets, and multiple unit tableted dosage forms. The proton pump inhibitors may be utilized in neutral or salt forms, including racemic form or pure form. The specific proton pump inhibitors taught are omeprazole (and encompassing its optical isomer esomeprazole),

lansoprazole, pantoprazole, and pariprazole (rabeprazole). The proton pump inhibitors are mixed with other components such as HPMC and layered over seeds resulting in a granular form, individually enterically coated with a polymer (including hydroxpropyl methylcellulose), and combined with alginate/antacid agent (placebo) powders or granules and other excipients to be compressed into a tablet. The multiple unit dosage form is also taught to be dispersed in liquid and can be given to patients with swallowing disorders. The formulated core material is in a granules size approximately between 0.1 and 4mm and preferably between 0.1 and 2mm.

Depui teaches the prepared active pellets/granules comprising omeprazole, hydroxypropyl methylcellulose and Polysorbate 80, and the tablet comprising those active granules with calcium carbonate (base), magnesium hydroxide (base), potato starch (glidant, diluent, disintegrant and binder), water, microcrystalline cellulose, crosslinked polyvidone (polyvinylpyrrolidone). Depui also teaches the antacid or alginate granules comprise mannitol, corn starch, potato starch, low-substituted hydroxypropylcellulose, microcrystalline cellulose, and crosslinked PVP. Depui also teaches the inclusion of additives for the granules including plasticizers, pigments, anti-tacking and anti-static agents such as talc and magnesium stearate. Depui teaches the inclusion of layer substances for the formulations for improved properties such as pH-buffering with components such as citric acid and talc. As the critical elements for the granules are taught, the properties of the granules such as viscosity would be inherent to the composition.

The placebo granules can be any number of materials in the tablet including the bases (antacids), the alginate, the microcellulose, buffers, lubricants, or any other number of excipients as they are all granules. Alginates, polymers, and other materials are known to affect absorption (see 112 above and Vaugelade et al.). Example 3 (Page 27-28) is one of several examples, fulfilling the claims. Depui teaches the prepared active pellets/granules comprising omeprazole, hydroxypropyl methylcellulose and Polysorbate 80, and the tablet comprising those active granules with calcium carbonate (base), magnesium hydroxide (base), potato starch (glidant, diluent, disintegrant and binder), water, microcrystalline cellulose, crosslinked polyvidone (polyvinylpyrrolidone) (Abstract, Page 2, lines 5-10, Page 3, lines 10-18, Page 4, lines 15-21, Page 5, lines 15-30, Page 6, lines 1-29, Page 7, lines 1-20, Page 8, lines 20-25, Page 9, lines 1-10, Page 10 (all), Page 11, lines 10-15, Page 12, lines 12-30, Page 13, lines 1-2, 25-30, Page 14, lines 1-Page 16 line 8, Page 22, lines 14-15, Example 1, Page 23 (all), Page 25-26, Example 2, Page 27-28, Example 3, Page 29, Example 4, Claim 1-8, 13-15, 17-18, 20-23). It is noted that a recitation of intended use in a composition claim has no patentable weight (e.g. administration, formulation of a dispersion).

All the critical elements are taught by the cited reference and thus the claims are anticipated.

14. Claims 1-4, 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ukai et al. (U.S. Pat. Pub. No. 2002/0039597).

Ukai et al. teaches a composition comprising benzimiadzole type compounds and its alkali salts-all are proton pump inhibitors, bases, thickeners, polymers (including

enteric polymers), and other pharmaceutical excipients that are formed into tablets soluble or rapidly degradable (dispersible) in water or in gastric acid. The specific proton pump inhibitors taught are omeprazole (and encompassing its optical isomer esomeprazole), lansoprazole, pantoprazole, and rabeprazole. The proton pump inhibitors coat a seed granule or core, to yield a granular form that is enterically coated with a polymer (including hydroxypropyl methylcellulose). It is then combined with bases, crospovidone, placebo granules not containing the proton inhibitors, and other excipients to be compressed into a tablet. The formulated core material is made, granulated, dried, and screened through a 24-mesh screen, producing particle sizes of about 841 micron or less (see STG Particle Size/Screen Mesh Comparison).

Tables 6-13 (Pages 6 -8) and Examples 28-29 provide several examples, fulfilling the claims. Ukai teaches the prepared active granules comprising sodium rabeprazole, carbonate, mannitol, and hydroxypropyl cellulose. The granule without the proton inhibitor has mannitol and hydroxypropyl cellulose (also a thickener) with variation. Crospovidone, talc, and HA Sankyo (contains talc, fumaric acid, and hydroxypropylmethyl cellulose) are also added with other excipients to form the placebo. As the critical elements for the granules are taught, the properties of the granules such as viscosity would be inherent to the composition (Abstract, Paragraph 2, 4, 7, 9-14, 17, 20-21, 25-26, 30-3, 40-43, 72-82, Claims 1-15). It is noted that a recitation of intended use in a composition claim has no patentable weight (e.g. administration, formulation of a dispersion).

All the critical elements are taught by the cited reference and thus the claims are anticipated.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Depui et al. (WO 97/25066) as applied to claims 1-4 and 6-8 in view of Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition).

Depui et al. teaches a pharmaceutical dosage form comprising proton pump inhibitors, bases (antacid agents), alginates, thickeners, polymers (including enteric polymers), and other pharmaceutical excipients to form multilayered tablets, sachets, and multiple unit tableted dosage forms. The proton pump inhibitors may be utilized in neutral or salt forms, including racemic form or pure form. The specific proton pump inhibitors taught are omeprazole (and encompassing its optical isomer esomeprazole), lansoprazole, pantoprazole, and pariprazole (rabeprazole). The proton pump inhibitors are in granular form, individually enterically coated with a polymer (including hydroxypropyl methylcellulose), and combined with alginate/antacid agent powders or granules and other excipients to be compressed into a tablet. The multiple unit dosage form is also taught to be dispersed in liquid and can be given to patients with swallowing

disorders. The formulated core material is in a granules size approximately between 0.1 and 4mm and preferably between 0.1 and 2mm.

Depui teaches the prepared active pellets/granules comprising omeprazole, hydroxypropyl methylcellulose and Polysorbate 80, and the tablet comprising those active granules with calcium carbonate (base), magnesium hydroxide (base), potato starch (glidant, diluent, disintegrant and binder), water, microcrystalline cellulose, crosslinked polyvidone (polyvinylpyrrolidone). Depui also teaches the antacid or alginate granules comprise mannitol, corn starch, potato starch, low-substituted hydroxypropylcellulose, microcrystalline cellulose, and crosslinked PVP. Depui also teaches the inclusion of additives for the granules including plasticizers, pigments, anti-tacking and anti-static agents such as talc and magnesium stearate. Depui teaches the inclusion of layer substances for antacid formulations for improved properties such as pH-buffering with components such as citric acid and talc (Abstract, Page 2, lines 5-10, Page 3, lines 10-18, Page 4, lines 15-21, Page 5, lines 15-30, Page 6, lines 1-29, Page 7, lines 1-20, Page 8, lines 20-25, Page 9, lines 1-10, Page 10 (all), Page 11, lines 10-15, Page 12, lines 12-30, Page 13, lines 1-2, 25-30, Page 14, lines 9-25, Page 16, lines 1-24, Page 19, lines 5-20, Page 22, lines 14-15, Example 1, Page 23 (all), Page 25-26, Example 2, Page 27-28, Example 3, Page 29, Example 4, Claim 1-8, 13-15, 17-18, 20-23).

Depui et al. does not expressly teach the incorporation of light anhydrous silicic acid (silicone dioxide).

Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition) teaches the benefits of antiadherents and glidants in formulations. Pharmaceutical Dosage Forms teaches that talc, Cab-O-Sil, and Syloid are analogous materials for both antiadherent and glidant properties. It also teaches that silica has greater efficiency as a glidant than magnesium stearate or purified talc.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to substitute light anhydrous silicic acid for talc or magnesium stearate, as suggested by Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition), and produce the instant invention. It would have been obvious to substitute one material for another depending on the desired flow property and adhesion for the product.

One of ordinary skill in the art would have been motivated to do this because it is desirable for manufacturers to have analogous choices to substitute the antiadherent and/or glidant when motivated by pricing, availability, or desired properties of the antiadherent and glidant used to produce the final product.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

17. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ukai et al. (U.S. Pat. Pub. No. 2002/0039597) as applied to claims 1-4 and 6-8 in view of Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition) and Samejima et al. (U.S. Pat. No. 5068112).

Ukai et al. teaches a composition comprising benzimiadzole type compounds and its alkali salts-all are proton pump inhibitors, bases, thickeners, polymers (including enteric polymers), and other pharmaceutical excipients that are formed into tablets soluble or rapidly degradable (dispersible) in water or in gastric acid. The specific proton pump inhibitors taught are omeprazole (and encompassing its optical isomer esomeprazole), lansoprazole, pantoprazole, and rabeprazole. The proton pump inhibitors are in granular form, individually enterically coated with a polymer (including hydroxypropyl methylcellulose), and combined with bases, crospovidone, granules not containing the proton inhibitors ("placebo"), and other excipients to be compressed into a tablet. The formulated core material is made, granulated, dried, and screened through a 24-mesh screen, producing particle sizes of about 841 micron or less (see STG Particle Size/Screen Mesh Comparison).

Tables 6-13 (Pages 6 -8) and Examples 28-29 provide several examples, fulfilling the claims. Ukai teaches the prepared active granules comprising sodium rabeprazole, carbonate, mannitol, and hydroxypropyl cellulose. The granule without the proton inhibitor has mannitol and hydroxypropyl cellulose (also a thickener) with variation. Crospovidone, talc, and HA Sankyo (contains talc, fumaric acid, and

hydroxypropylmethyl cellulose) are also added with other excipients to form the placebo (Abstract, Paragraph 2, 4, 7, 9-14, 17, 20-21, 25-26, 29-33, 40-43, 72-82, Claims 1-15).

Ukai et al. do not expressly teach the incorporation of anhydrous silicic acid (silicon dioxide) or citric acid.

Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition) teaches the benefits of antiadherents and glidants in formulations. Pharmaceutical Dosage Forms teaches that talc, Cab-O-Sil, and Syloid are analogous materials for both antiadherent and glidant properties. It also teaches that silica has greater efficiency as a glidant than magnesium stearate or purified talc.

Samejima et al. teaches that known buffers for pharmaceutical preparations such as granules are organic acids such as fumaric acid, succinic acid, citric acid, and malic acid (Col. 2, lines 5-21 and 34-36).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to substitute light anhydrous silicic acid for talc or magnesium stearate, as suggested by Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition) and substitute citric acid for fumaric acid as suggested by Samejima, and produce the instant invention. It would have been obvious to substitute one material for another depending on the desired flow property, adhesion, or amount of buffering for the product.

One of ordinary skill in the art would have been motivated to do this because it is desirable for manufacturers to have analogous choices to substitute the

antiadherent/glidant or buffers when motivated by pricing, availability, or desired properties of the antiadherent, glidant, and buffer used to produce the final product.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Response to Arguments

18. Claims 1-4, 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Depui et al. (WO 97/25066).

Applicant's arguments filed 7/21/2008 have been fully considered but they are not persuasive. Applicant asserts that the placebo granules are a medicament as it comprises alginate/antacid. This is not persuasive as addressed above with respect to the written description and indefiniteness of the term “placebo granules” as mannitol is pharmaceutically active and used as a diuretic and laxative. There is no clear recitation what is encompasses a “placebo granule”, mannitol contradicts the art accepted recitation, and the specification includes actives in the example. The art meets the composition recitations of the claims.

Accordingly, the rejection is maintained.

19. Claims 1-4, 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ukai et al. (U.S. Pat. Pub. No. 2002/0039597).

Applicant's arguments filed 7/21/2008 have been fully considered but they are not persuasive. Applicant asserts that Ukai does not teach the coating of seeds with a pharmaceutically active substance. This is neither accurate nor persuasive. Ukai teaches that the active (benzimidazole compound) and other components can be laminated or coated on spherical granules consisting of seed granules of refined white sugar, a mixture of sugar and starch, or crystalline cellulose as examples (paragraph 25) and further coated with enteric substances (i.e. polymers- e.g. HPMC).

Accordingly, the rejection is maintained.

20. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Depui et al. (WO 97/25066) as applied to claims 1-4 and 6-8 in view of Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition).

Applicant's arguments filed 7/21/2008 have been fully considered but they are not persuasive. Applicant asserts that there is no teaching or disclosure to arrive at the instant invention. This is not persuasive as addressed in the previous action Depui teaches the inclusion of additives for the granules including plasticizers, pigments, anti-tacking and anti-static agents such as talc and magnesium stearate. Depui teaches the inclusion of layer substances for antacid formulations for improved properties such as pH-buffering with components such as citric acid and talc. Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition) teaches the benefits of antiadherents and glidants in formulations and that talc, Cab-O-Sil, and Syloid are analogous materials for

both antiadherent and glidant properties. It also teaches that silica has greater efficiency as a glidant than magnesium stearate or purified talc.

It would have been obvious to one of skill in the art to substitute one material for another depending on the desired flow property and adhesion for the product and motivated to do this because it is desirable for manufacturers to have analogous choices to substitute the antiadherent and/or glidant when motivated by pricing, availability, or desired properties of the antiadherent and glidant used to produce the final product.

Accordingly, the rejection is maintained.

21. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ukai et al. (U.S. Pat. Pub. No. 2002/0039597) as applied to claims 1-4 and 6-8 in view of Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition) and Samejima et al. (U.S. Pat. No. 5068112).

Applicant's arguments filed 7/21/2008 have been fully considered but they are not persuasive. Applicant asserts that there is no teaching or disclosure to arrive at the instant invention. This is not persuasive as addressed in the previous action Ukai teaches the prepared active granules comprising sodium rabeprazole, carbonate, mannitol, and hydroxypropyl cellulose. The placebo granule has mannitol and hydroxypropyl cellulose (also a thickener) with variation. Crospovidone, talc, and HA Sankyo (contains talc, fumaric acid, and hydroxypropylmethyl cellulose) are also added with other excipients to form the placebo. Pharmaceutical Dosage Forms: Tablets (Vol.1, Second edition) teaches the benefits of antiadherents and glidants in

formulations and that talc, Cab-O-Sil, and Syloid are analogous materials for both antiadherent and glidant properties. It also teaches that silica has greater efficiency as a glidant than magnesium stearate or purified talc.

Samejima et al. teaches that known buffers include fumaric acid (present in HA Sankyo), succinic acid, citric acid, and malic acid (Col. 2, lines 5-21 and 34-36).

It would have been obvious to one of skill in the art to substitute one material for another depending on the desired flow property, adhesion, or buffering for the product desired and motivated to do this because it is desirable for manufacturers to have analogous choices to substitute the antiadherent, glidant, or buffer when motivated by pricing, availability, or desired properties of the final product.

Accordingly, the rejection is maintained.

Conclusion

22. Claims 1-4 and 6-9 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GIGI HUANG whose telephone number is (571)272-9073. The examiner can normally be reached on Monday-Thursday 8:30AM-6:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GH
/Zohreh A Fay/
Primary Examiner, Art Unit 1612